

SUBCHAPTER A—GENERAL

PART 3401—ED ACQUISITION REGULATION SYSTEM

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AUTHORITY: 5 U.S.C. 301 and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

3401.000 Scope of part.

The Federal Acquisition Regulation System brings together, in title 48 of the Code of Federal Regulations, the acquisition regulations applicable to all executive agencies of the Federal government. This part establishes a system of Department of Education (Department) acquisition regulations,

referred to as the EDAR, for the codification and publication of policies and procedures of the Department that implement and supplement the Federal Acquisition Regulation (FAR).

Subpart 3401.1—Purpose, Authority, Issuance

3401.104 Applicability.

(a) The FAR and the EDAR apply to all Department contracts, as defined in FAR Part 2, except where expressly excluded.

(b) 20 U.S.C. 1018a provides the PBO with procurement authority and flexibility associated with sections (a)–(l) of the statute.

(c) For non-appropriated fund contracts, the FAR and EDAR will be followed to the maximum extent practicable, excluding provisions determined by the contracting officer, with the advice of counsel, not to apply to contracts funded with non-appropriated funds. Adherence to a process similar to those required by or best practices suggested by the FAR will not confer court jurisdiction concerning non-appropriated funds that does not otherwise exist.

3401.105 Issuance.

3401.105-2 Arrangement of regulations.

(c)(5) *References and citations.* The regulations in this chapter may be referred to as the Department of Education Acquisition Regulation or the EDAR. References to the EDAR are made in the same manner as references to the FAR. *See* FAR 1.105-2(c).

3401.105-3 Copies.

Copies of the EDAR in the FEDERAL REGISTER and Code of Federal Regulations (CFR) may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. An electronic version of the EDAR is available for viewing at: <http://www.ed.gov/policy/fund/reg/library/edar.html>.

Subpart 3401.3—Agency Acquisition Regulations

3401.301 Policy.

(a)(1) Subject to the authorities in FAR 1.301(c) and other statutory authority, the Secretary of Education (Secretary) or delegate may issue or authorize the issuance of the EDAR. It implements or supplements the FAR and incorporates, together with the FAR, Department policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between the Agency, including its suborganizations, and contractors or prospective contractors. The Head of Contracting Activity (HCA) for FSA may issue supplementary guidelines applicable to FSA.

3401.303 Publication and codification.

(a) The EDAR is issued as chapter 34 of title 48 of the CFR.

(1) The FAR numbering illustrations at FAR 1.105–2 apply to the EDAR.

(2) The EDAR numbering system corresponds with the FAR numbering system. An EDAR citation will include the prefix “34” prior to its corresponding FAR part citation; *e.g.*, FAR 25.108–2 would have corresponding EDAR text numbered as EDAR 3425.108–2.

(3) Supplementary material for which there is no counterpart in the FAR will be codified with a suffix beginning with “70” or, in cases of successive sections and subsections, will be numbered in the 70 series (*i.e.*, 71–79). These supplementing sections and subsections will appear to the closest corresponding FAR citation; *e.g.*, FAR 16.4 (Incentive Contracts) may be augmented in the EDAR by citing EDAR 3416.470 (Award Term) and FAR 16.403 (Fixed-price incentive contracts) may be augmented in the EDAR by citing EDAR 3416.403–70 (Award fee contracts). (*Note:* These citations are for illustrative purposes only and may not actually appear in the published EDAR). For example:

FAR	Is implemented as	Is augmented as
15	3415	3415.70
15.1	3415.1	3415.170
15.101	3415.101	3415.101–70
15.101–1	3415.101–1	3415.101–1–70
15.101–1(b)	3415.101–1(b)	3415.101–1(b)(70)
15.101–1(b)(1)	3415.101–1(b)(1)	3415.101–1(b)(1)(70)

(c) *Activity-specific authority.* Guidance that is unique to an organization with HCA authority contains that activity’s acronym directly preceding the cite. The following activity acronyms apply:

FSA—Federal Student Aid.

3401.304 Agency control and compliance procedures.

(a) The EDAR is issued for Department acquisition guidance in accordance with the policies stated in FAR 1.301. The EDAR is subject to the same review procedures within the Department as other regulations of the Department.

Subpart 3401.4—Deviations

3401.401 Definition.

A deviation from the EDAR has the same meaning as a deviation from the FAR.

3401.403 Individual deviations.

An individual deviation from the FAR or the EDAR must be approved by the Senior Procurement Executive (SPE).

3401.404 Class deviations.

A class deviation from the FAR or the EDAR must be approved by the Chief Acquisition Officer (CAO).

Department of Education

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Subpart 3401.5—Agency and Public Participation

3401.501 Solicitation of agency and public views.

3401.501-2 Opportunity for public comments.

Unless the Secretary approves an exception, the Department issues the EDAR, including any amendments to the EDAR, in accordance with the procedures for public participation in 5 U.S.C. 553. Comments on proposed Department notices of proposed rule-making may be made at <http://www.regulations.gov>.

Subpart 3401.6—Career Development, Contracting Authority, and Responsibilities

3401.601 General.

(a) Contracting authority is vested in the Secretary. The Secretary has delegated this authority to the CAO. The Secretary has also delegated contracting authority to the SPE, giving the SPE broad authority to perform functions dealing with the management direction of the entire Department's procurement system, including implementation of its unique procurement policies, regulations, and standards. Limitations to the extent of this authority and successive delegations are set forth in the respective memorandums of delegations.

3401.602-3 Ratification of unauthorized commitments.

(a) *Definitions.* As used in this subpart, *commitment* includes issuance of letters of intent and arrangements for free vendor services or use of equipment with the promise or the appearance of commitment that a contract, modification, or order will, or may, be awarded.

(b) *Policy.*

(1) The HCA or Chief of the Contracting Office may, or may not, later ratify unauthorized commitments made by individuals without contracting authority or by contracting officers acting in excess of the limits of their delegated authority. Law and regulation requires that only individuals acting within the scope of their author-

ity make acquisitions. Within the Department, that authority vests solely with the Contracting Officer. Acquisitions made by other than authorized personnel are matters of serious misconduct. The employee may be held legally and personally liable for the unauthorized commitment.

(2) Ratifications do not require concurrence from legal counsel.

(3) The person who made the unauthorized commitment must prepare the request for approval that must be submitted through the person's manager to the approving official.

(4) The Chief of the Contracting Office may review and sign or reject ratification requests up to \$25,000.

(5) All other ratification requests must be reviewed and signed or rejected by the HCA.

3401.670 Nomination and appointment of contracting officer's representatives (CORs).

3401.670-1 General.

(a) Program offices must nominate personnel for consideration of a COR appointment in accordance with the Department's COR Policy Guide.

(b) The contracting officer must determine what, if any, duties will be delegated to a COR.

(c) The contracting officer may appoint as many CORs as is deemed necessary to support efficient contract administration.

(d) Only individuals with a written delegation of authority from a contracting officer may act in any capacity as a representative of that contracting officer, including any alternate, assistant, or back-up duties to the COR.

(e) For all contracts in which an information technology system exists, the System Security Officer for that system will perform all responsibilities necessary for contractor access to the system.

3401.670-2 Appointment.

COR appointments must be in accordance with the Department's COR Program Guide.

3401.670-3 Contract clause.

Contracting officers must insert a clause substantially the same as the clause at 3452.201-70 (Contracting Officer's Representative (COR)), in all solicitations and contracts for which a COR will be (or is) appointed.

PART 3402—DEFINITIONS OF WORDS AND TERMS

Subpart 3402.1—Definitions

Sec.

3402.101 Definitions.

3402.101-70 Abbreviations and acronyms.

Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

AUTHORITY: 5 U.S.C. 301 and 20 U.S.C. 1018a.

SOURCE: 76 FR 12796, Mar. 8, 2011, unless otherwise noted.

Subpart 3402.1—Definitions

3402.101 Definitions.

As used in this chapter—

Chief Acquisition Officer or *CAO* means the official responsible for monitoring the agency's acquisition activities, evaluating them based on applicable performance measurements, increasing the use of full and open competition in agency acquisitions, making acquisition decisions consistent with applicable laws, and establishing clear lines of authority, accountability, and responsibility for acquisition decision-making and developing and maintaining an acquisition career management program.

Chief of the Contracting Office means an official serving in the contracting activity (CAM or FSA Acquisitions) as the manager of a group that awards and administers contracts for a principal office of the Department. *See also* definition of *Head of the Contracting Activity* or *HCA* below.

Contracting Officer's Representative or *COR* means the person representing the Federal government for the purpose of technical monitoring of contract performance. The COR is not authorized to issue any instructions or directions that effect any increases or decreases in the scope of work or that would result in the increase or decrease of the

cost or price of a contract or a change in the delivery dates or performance period of a contract.

Department or *ED* means the United States Department of Education.

Head of the Contracting Activity or *HCA* means those officials within the Department who have responsibility for and manage an acquisition organization and usually hold unlimited procurement authority. The Director, Federal Student Aid Acquisitions, is the HCA for FSA. The Director, Contracts and Acquisitions Management (CAM), is the HCA for all other Departmental program offices and all boards, commissions, and councils under the management control of the Department.

Performance-Based Organization or *PBO* is the office within the Department that is mandated by Public Law 105-244 to carry out Federal student assistance or aid programs and report to Congress on an annual basis. It may also be referred to as "Federal Student Aid."

Senior Procurement Executive or *SPE* means the single agency official appointed as such by the head of the agency and delegated broad responsibility for acquisition functions, including issuing agency acquisition policy and reporting on acquisitions agency-wide. The SPE also acts as the official one level above the contracting officer when the HCA is acting as a contracting officer.

3402.101-70 Abbreviations and acronyms.

CAO—Chief Acquisition Officer.

CO—Contracting Officer.

COR—Contracting Officer's Representative.

FSA—Federal Student Aid.

HCA—Head of the Contracting Activity.

IPv6—Internet Protocol version 6.

OMB—Office of Management and Budget.

OSDBU—Office of Small and Disadvantaged Business Utilization.

PBO—Performance-Based Organization (Federal Student Aid).

RFP—Request for Proposal.

SBA—Small Business Administration.

SPE—Senior Procurement Executive.

Subpart 3402.2—Definitions Clause

3402.201 Contract clause.

The contracting officer must insert the clause at 3452.202-1 (Definitions—